

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Justin Stiles,

Petitioner,

v.

Civil No. 07-1524 (JNE/AJB)  
ORDER

Minnesota Commissioner of  
Corrections, Joan Fabian,

Respondent.

This case is before the Court on a Report and Recommendation issued by the Honorable Arthur J. Boylan, United States Magistrate Judge, on September 24, 2007. The magistrate judge recommended that Respondent's motion to dismiss be granted and that Petitioner's amended petition under 28 U.S.C. § 2254 for writ of habeas corpus be dismissed with prejudice.

Petitioner objected. Based on a de novo review of the record, the Court adopts the Report and Recommendation. *See* D. Minn. LR 72.2(b).

An appeal may not be taken from a final order denying a petition under section 2254 without a certificate of appealability (COA). 28 U.S.C. § 2253(c)(1)(A) (2000); Fed. R. App. P. 22(b)(1). A court cannot grant a COA unless the applicant "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In *Slack v. McDaniel*, 529 U.S. 473 (2000), the United States Supreme Court explained how a federal district court should determine an applicant's eligibility for a COA in a case involving dismissal of a habeas petition on procedural grounds, rather than on the merits:

When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. . . . Where a plain procedural bar is present and the district

court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further. In such a circumstance, no appeal would be warranted.

529 U.S. at 484. For the reasons set forth in the Report and Recommendation, the petition is barred by procedural default. Jurists of reason would not find this conclusion debatable. Accordingly, Petitioner is not entitled to a COA.

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Respondent's motions to dismiss Petitioner's petition for habeas corpus relief pursuant to 28 U.S.C. § 2254 [Docket Nos. 5 and 10] are GRANTED.
2. Petitioner's amended petition under 28 U.S.C. § 2254 for writ of habeas corpus [Docket No. 4] is DISMISSED WITH PREJUDICE.
3. Petitioner is not entitled to a certificate of appealability.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: October 31, 2007

s/ Joan N. Ericksen  
JOAN N. ERICKSEN  
United States District Judge